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No. 485

Supreme Court of the United States

OCTOBER TERM, 1950.

FLOYD E. QUINCY,
Petitioner,

VERSUS

THE TEXAS COMPANY, a corporation; LILLIE ROBERTSON, Administratrix of the Estate of Jesse J. Robertson, deceased; J. H. ADAIR; COLE JOHNSON; GORDON J. PALMER; PARRASADA L. FOSTER; PINK WILLIAMS; MARY M. CRAMBLETT; B. I. HINES; W. F. TURNER; J. E. DEVINE; and QUINTIN LITTLE,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

FLOYD E. QUINCY,
By H. A. LEDBETTER,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Floyd E. Quincy, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above entitled cause on the 8th day of November, 1950.

OPINIONS BELOW

The judgment of the United States District Court for the Eastern District of Oklahoma was entered May 5,

1950 (R. 7). The opinion of the United States Court of Appeals for the Tenth Circuit is shown at page 11 of the record. Petition for rehearing was filed November 20, 1950 (R. 17), and the petition for rehearing was denied December 8, 1950 (R. 25).

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on November 8, 1950 (R. 11). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of September 13, 1925, 45 Stat. 938, 28 U. S. C. A., 347.

STATEMENT OF CASE

This suit was brought in the United States District Court for the Eastern District of Oklahoma by Floyd E. Quincy, a one-half blood unenrolled Chickasaw Indian, for the purpose of cancelling mineral grants which he executed during the years 1936 and 1937, and to quiet title to the land here involved (R. 1).

The respondents filed a motion to dismiss (R. 4), and the motion was sustained (R. 5).

The land involved was the homestead allotment of Thomas Quincy, a full-blood Chickasaw Indian who died in 1923, leaving surviving him as his sole and only heir, Floyd E. Quincy, your petitioner.

Pursuant to the Act of May 10, 1928, c. 517, Section 4, 45 Stat. 495, there was issued a tax-exempt certificate covering the land here involved.

The conveyances executed by your petitioner were not approved by the County Court of Carter County, Oklahoma, where Thomas Quincy died, or by the Secretary of the Interior.

QUESTIONS INVOLVED

The question presented here is whether the petitioner, Floyd E. Quincy, an unenrolled one-half blood Chickasaw Indian, had the right of alienation during the years 1936 and 1937, of the homestead tax-exempt lands inherited in 1923 from his deceased father, Thomas Quincy.

STATUTES INVOLVED

Act of May 10, 1928, c. 517, Sections 1 and 4 thereof, 45 Stat. 495. See Appendix, page i.

Act of Congress of January 27, 1933, Section 1, 47 Stat. 777. See Appendix, pages i-ii.

Act of Congress of February 11, 1936, 49 Stat. 1135, c. 50, U. S. C. A., Section 393a. See Appendix, page ii.

SPECIFICATION OF ERRORS

1. The Court of Appeals for the Tenth Circuit erred in finding and holding that Floyd E. Quincy was an unrestricted Indian at the time of the execution of the conveyances in 1936 and 1937.

2. The Court of Appeals for the Tenth Circuit erred in finding and holding that the words "restricted Indians" used in the Act of January 27, 1933, c. 23, 47 Stat. 777, did not include your petitioner.

3. The Court of Appeals for the Tenth Circuit erred in failing to find and hold that the Act of Congress of February 11, 1936, 49 Stat. 1135, c. 50, was a legislative interpretation of the Act of Congress of January 27, 1933, c. 23, 47 Stat. 777.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals in its opinion said in effect that the question was there for the first time.

2. Counsel for respondents, in arguing the case in the Court of Appeals, said in effect that hundreds of cases in the Indian Territory portion of Oklahoma would be affected by the decision of the Court.

3. The opinion of the Court of Appeals is in conflict with the opinion of the Court of Appeals in the case of *Glenn* v. *Lewis,* 105 Fed. (2d) 398, and the case of *U. S.* v. *Watashe,* 117 Fed. (2d) 947, and here in the Indian Territory portion of Oklahoma, those hundreds of persons who have acquired title where the question here is involved, are entitled to have the opinion of this Court on the question here involved. Clearly the question presented is of importance and the settlement of the question by this Court is plainly in the public interest.

In the case of *Glenn* v. *Lewis,* 105 Fed. (2d) 398, the Court of Appeals for the Tenth Circuit, in an opinion by Judge Phillips, in construing the Acts of 1928, 1933, and 1936, *supra,* held that the inherited tax-exempt homestead of a one-half or more blood Indian was restricted since the Act of May 10, 1928.

In the case of *U. S.* v. *Watashe*, 117 Fed. (2d) 947, the Court of Appeals for the Tenth Circuit, in an opinion by Judge Bratton, in construing said Acts of Congress aforesaid, held that the inherited tax-exempt homestead of a one-half or more blood Indian was restricted for the first time since the passage of the Act of Congress of 1933, *supra*.

Now in the case at bar, Judge Murrah, held in construing said Acts of Congress, that the inherited tax-exempt homestead was unrestricted since April 26, 1931, and by reason of which this Court should assume jurisdiction and settle the question once and for all.

4. There are many cases involving the question here pending in both the State and Federal courts of Oklahoma, and your petitioner says that it is important that this Court settle the question.

5. The Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court, and has decided a Federal question in a way probably in conflict with applicable decisions of this Court in this, that the Court of Appeals has decided that your petitioner could sell and convey the land here in question, but could not exercise dominion and control of and convey oil and gas produced from said land.

Respectfully submitted,

FLOYD E. QUINCY,
By H. A. LEDBETTER,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

ARGUMENT

In the case of *Glenn* v. *Lewis,* 105 Fed. (2d) 398 (writ of certiorari denied by this Court, 308 U. S. 598), the Court of Appeals for the Tenth Circuit held that the tax-exempt inherited land of a three-fourths blood Indian was restricted where the deceased patentee died after the passage of the Act of Congress of 1933, *supra.* The only difference between that case and the case at bar is that the patentee here died in 1923, but the conveyances executed by the petitioner were executed after the passage of the Act of Congress of 1933. It is a well settled rule of law, that the law in force at the time of the execution of the conveyance controls. See *Harris* v. *Gale,* 180 Fed. 712; *U. S.* v. *Knight,* 206 Fed. 145; *Brader* v. *James,* 246 U. S. 288 (63 L. Ed. 591).

The Act of Congress of May 10, 1928, *supra,* provided that allotted lands of one-half blood or more Indians should be restricted until 1956.

By the Act of 1933, *supra,* the part of Section 1 preceding the proviso, provides that all funds and securities held by the Secretary of the Interior coming under the supervision of the Secretary of the Interior and belonging to members of the Five Civilized Tribes of one-half or more Indian blood shall be restricted. The section continues by providing in the proviso that where a restricted and tax-exempt land is acquired by inheritance, etc., it shall remain restricted.

The obvious meaning of restricted Indians is that it refers to Indians whose funds are restricted under the first part of Section 1, that is, Indians of one-half or more Indian blood.

Now since those of one-half or more Indian blood are to be protected in their inheritance of restricted funds, it is apparent that Congress must have also intended to protect their inheritance of restricted and tax-exempt land. The source of such funds was largely lands and if it were necessary to protect the funds, it would seem equally necessary to protect the source of such funds.

Again, the first proviso deals with lands acquired by inheritance or devise. Allotted lands acquired in such manner by full-blood Indians were already restricted. It necessarily would follow then that it was unnecessary to impose restrictions or provide for tax-exemptions as to full-blood Indian heirs or devisees. To our mind this would indicate an intention on the part of Congress to deal with an Indian heir of less than full-blood.

See *Glenn* v. *Lewis,* 105 Fed. (2d) 398; *Hickey* v. *U. S.,* 64 Fed. (2d) 628; *Ickes* v. *U. S.,* 64 Fed. (2d) 982; *King* v. *Ickes, Secretary of Interior,* 64 Fed. (2d) 979; *U. S.* v. *Watashe,* 117 Fed. (2d) 947.

In the case of *U. S.* v. *Watashe,* 117 Fed. (2d) 947, the Court of Appeals, in construing the Act of Congress of 1933, *supra,* made this pertinent remark:

> "From the time of the enactment of the Act of May 27, 1908, down to the enactment of the Act of January 27, 1933, lands acquired from an allottee through inheritance or devise, by less than full-blood Indian

heirs, were free of restrictions. By the Act of January 27, 1933, for the first time since 1908, restrictions were imposed upon the lands of half-blood Indian heirs."

In the case of *Glenn* v. *Lewis, supra,* the Court of Appeals held that a one-half blood Indian who inherited tax-exempt land was a restricted Indian where he inherited the land after the passage of the Act of Congress of 1933.

In the *Glenn* v. *Lewis* case, *supra,* the Court said:

"Moreover, the subsequent Act of February 11, 1936, 49 Stat. 1135, c. 50, U. S. C. A., Section 393a, is a legislative construction that the first proviso of the Act of 1933 embraces members of the Five Civilized Tribes of one-half or more Indian blood. The Act of 1936 permits 'Indians of the Five Civilized Tribes * * * of one-half or more Indian blood, enrolled or unenrolled', to lease their restricted land for a specified period. Unless the first proviso covers Indians of the half-blood, there could be no unenrolled Indians of the half-blood to whom the Act of 1936 could apply, for unenrolled Indians never received allotments, the special estates created by Sec. 9 of the Act of May 27, 1908, terminated April 26, 1931, and, prior to the Act of 1933, Indian heirs of less than full-blood, whether enrolled or unenrolled, took inherited land free from restrictions and needed no statutory permission to lease their land.

"Finally, such has been the administrative construction of the act. See Solicitor's Opinion, 54 Interior Decisions, 382, 1934, and 3 Fed. Reg. (1938) pp. 877, 884."

Which in our opinion could not be interpreted to apply in a case where the Indian died after the Act of 1933, without

being applied to a case where the Indian died prior to the Act of 1933.

The petitioner here was under twenty-one years of age at the time of the passage of the Act of Congress of 1933. Minority is a Federal restriction. See *Bell* v. *Cook,* 192 Fed. 597; *Priddy* v. *Thompson,* 204 Fed. 935; *Truskett* v. *Closser,* 236 U. S. 223, 59 L. Ed. 549. So that at the time of the passage of the Act of Congress of 1933, not only the Indian was restricted, but the allotted land inherited by him was also restricted.

Although the land was unrestricted and although the Indian was unrestricted at the time of the passage of the Act of Congress of 1933, Congress had a right to reimpose restrictions. See *Brader* v. *James,* 246 U. S. 288, 63 L. Ed. 591.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

H. A. LEDBETTER,
Counsel for Petitioner.

APPENDIX

Act of May 10, 1928, c. 517, Section 1 and 4 thereof, 45 Stat. 495.

Section 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the restrictions against the alienation, lease mortgage, or other encumbrance of the lands allotted to members of the Five Civilized Tribes in Oklahoma, enrolled as of one-half or more Indian blood, be, and they are hereby, extended, for an additional period of twenty-five years commencing on April 26, 1931. * * *

Section 4. * * * That the Indian owner of restricted land, if an adult and not legally incompetent, shall select from his restricted land a tract or tracts, not exceeding in the aggregate one hundred and sixty acres, to remain exempt from taxation and shall file with the Superintendent for the Five Civilized Tribes a certificate designating and describing the tract or tracts so selected. And provided further, That in cases where such Indian fails, within two years from date hereof, to file such certificate, and in cases where the Indian owner is a minor or otherwise legally incompetent, the selection shall be made and certificate prepared by the Superintendent for the Five Civilized Tribes; and such certificate, whether by the Indian or by the Superintendent for the Five Civilized Tribes, shall be subject to approval by the Secretary of the Interior and shall be recorded in the office of the Superintendent for the Five Civilized Tribes and in the county records of the county in which the land is situated; * * *.

Act of January 27, 1933, Section 1 thereof, 47 Stat. 777.

TO BE ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That all funds and other securities now held by or which may hereafter

come under the supervision of the Secretary of the Interior, belonging to and only so long as belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, are hereby declared to be restricted and shall remain subject to the jurisdiction of said Secretary until April 26, 1956, subject to expenditure in the meantime for the use and benefit of the individual Indians to whom such funds and securities belong, under such rules and regulations as said Secretary may prescribe: PROVIDED, That where the entire interest in any tract of restricted and tax-exempt land belonging to members of the Five Civilized Tribes is acquired by inheritance, devise, gift, or purchase, with restricted funds, by or for restricted Indians, such lands shall remain restricted and tax-exempt during the life of and as long as held by such restricted Indians, but not longer than April 26, 1956, unless the restrictions are removed in the meantime in the manner provided by law. * * *

Act of Congress of February 11, 1936, 49 Stat. 1135, c. 50, U. S. C. A., Section 393a.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That from and after thirty days from the date of approval of this Act the restricted lands belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, may be leased for periods of not to exceed five years for farming and grazing purposes, under such rules and regulations as the Secretary of the Interior may prescribe and not otherwise. Such leases shall be made by the owner or owners of such lands if adults, subject to approval by the superintendent or other official in charge of the Five Civilized Tribes Agency, and by such superintendent or other official in charge of said agency in cases of minors and of Indians who are *non compos mentis*.

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No. 486

In the Supreme Court of the United States

October Term, 1950

FLOYD E. QUINCY, *Petitioner,*

vs.

THE TEXAS COMPANY, A CORP., *ET AL., Respondents.*

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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February, 1951.

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SUPREME COURT OF THE UNITED STATES

October Term, 1950

No. 485

Floyd E. Quincy, - - - - - - - - *Petitioner,*

vs.

The Texas Company, a corporation; Lillie Robertson, Administratrix of the Estate of Jesse J. Robertson, deceased; J. H. Adair; Cole Johnson; Gordon J. Palmer; Parrasada L. Foster; Pink Williams; Mary M. Cramblett; B. I. Hines; W. F. Turner; J. E. Devine; and Quinton Little, - - - - - - - *Respondents.*

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of Case.

The question is, whether a Chickasaw Indian of one-half Indian blood, born in 1913, who inherited the homestead allotment of his full-blood father by reason of the father's death in 1923, was restricted, so as to make invalid conveyances executed in the years 1936 and 1937.

Contention of Respondents.

It is the contention of respondents that upon the death of the allottee in 1923, all restrictions upon the land in-

volved were removed under Section 9 of the Act of May 27, 1908, (35 Stat. 312), with the exception of that attaching to the "special estate" created for the benefit of issue born since March 4, 1906; that said special estate terminated and completely disappeared on April 26, 1931, both under the provisions of said Act of May 27, 1908, and also of the Act of May 10, 1928, (45 Stat. 495) whereupon no restrictions of any character remained; that the Act of January 27, 1933, (47 Stat. 777) did not impose restrictions upon half-blood heirs where descent was cast prior to that Act, and where the heirs had become wholly unrestricted before the effective date of the Act; and that the conveyances which petitioner made were accordingly valid and binding upon him.

(Emphasis herein is ours unless otherwise noted.)

Additional Statutes Involved.

Act of May 27, 1908, a portion of Section 9 thereof, 35 Stat. 312. See Appendix, p. 11.

Act of May 10, 1928, a portion of Section 2 and all of Section 5 thereof. See Appendix, p. 11.

These sections should receive attention in addition to those cited on page 3 of the Petition for Writ of Certiorari.

ARGUMENT.

The Land Was Unrestricted Prior to the Act of 1933.

Since the petitioner *inherited* the land here involved from the original allottee, and since petitioner is an Indian of less than the full-blood, said land descended to him free from all restrictions, except for the temporary restriction concurrent with what has become known as the "special estate," created by the second proviso of Section 9 of the Act of May 27, 1908. And such "special estate" had completely disappeared on April 26, 1931, as will be pointed out, thus leaving no restrictions whatever after that date.

Section 9 of the Act of May 27, 1908 (35 Stat. 312), provides:

> "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land. Provided, that no conveyance of any interest of any *full-blood* Indian heir in such land shall be valid unless approved," etc.

This is followed by the proviso that the homestead of an allottee of one-half or more Indian blood who dies leaving issue born since March 4, 1906, shall remain inalienable for the use and support of such issue during lifetime, not, however, beyond April 26, 1931. There are other provisions not pertinent to the question under consideration.

Apart from the special estate, no one will deny that the death of the allottee in 1923 operated to remove all restrictions upon the land in the hands of an heir of less than the full-blood.

Sec. 9, Act of May 27, 1908, set out *supra*.

Under the express terms of the second proviso of Section 9 of the 1908 Act the ultimate limit of duration of the special estate, there created for the use and support of issue born since March 4, 1906, was April 26, 1931. Therefore, since the special estate then ceased to exist, it necessarily follows that any restrictions concomitant therewith likewise disappeared.

The Act of May 10, 1928 (45 Stat. 495), expressly repealed the second proviso of Section 9 of the 1908 Act, which had created the special estate, as amended by the Act of April 12, 1926 (44 Stat. 239), said repeal being effective April 26, 1931, which was the time that said estate would have terminated anyway under the Acts of 1908 and 1926. Section 1 of the 1928 Act had extended certain other restrictions on allottees, and evidently the legislators wished to leave no room for contention that the restrictions accompanying the special estate were to be extended. Therefore in Section 2 of the 1928 Act the proviso of the 1908 Act which had created the special estate, as so amended, was itself repealed, effective April 26, 1931. (See Appendix.)

If the only reason that any restrictions existed effecting this land was by virtue of the special estate and if that estate terminated on April 26, 1931, both under the provisions of the creative act and also by a later Act of Congress, it is clear that the land became unrestricted on April 26, 1931.

Restrictions which have terminated by lapse of time prescribed for their existence have in legal effect been "removed."

—*United States* v. *Bartlett*, 235 U. S. 72, 59 L. ed. 137.

The Act of January 27, 1933, (47 Stat. 777) was not retroactive in its effect so as to impose restrictions upon land which was inherited prior to its effective date, and which had become unrestricted.

The first proviso of the 1933 Act, dealing with restrictions upon land, is prospective and not retroactive in its operation. The language of the Act provides that under certain conditions the land shall "remain restricted." To come within its provisions, therefore, the land must either have been restricted when the Act went into effect (and so "remain restricted" under the provisions of the Act), or, if thereafter acquired, must have been restricted when so acquired, and for that reason "remain restricted." If, however, the land had been acquired long before the Act, and had become unrestricted before the effective date of the Act, manifestly it could not then "remain restricted," and it would be a strained and unnatural construction and do violence to the language to say that it could.

The general rule is that a statute is not to be given a retroactive effect unless clearly so intended by the legislating body. The legislators are presumed to act for the future, and not for the past.

—*White* v. *United States,* 191 U. S. 551, 48 L. ed. 298; *Cameron* v. *United States,* 231 U. S. 720, 58 L. ed. 453.

In support of his application for the writ, petitioner appears to rely chiefly upon the contention that the opinion of the Court of Appeals in the present case is in conflict with the opinions of that Court in the cases of *Glenn* v. *Lewis,* 105 F. (2d) 398, and *United States* v. *Watashe,* 117 F. (2d) 947. The contention is fallacious. Each of these cases is clearly distinguishable from the instant case, and no conflict in the opinions exists.

Both *Glenn* v. *Lewis* and *United States* v. *Watashe*

apply the Act of 1933 to land inherited by Indian heirs of less than the full-blood, but apply it *prospectively.* In other words, *the descent was cast in each of those cases after the effective date of the 1933 Act,* and in each case the heirs inherited lands which were restricted at a time when the Act was in force. Hence the land could—and did—*"remain restricted."* The allottees in the two cases under discussion died in 1934 and in 1937, respectively.

These cases are not antagonistic to the holding of the Court of Appeals in the present case, but are entirely consistent therewith. In each of the said two cases it is pointed out that where land was inherited by an Indian of less than the full-blood, *prior to the Act of 1933,* the land descended free from restrictions. For example, in *Glenn* v. *Lewis* it is said:

> "* * * the special estate created by Sec. 9 of the Act of May 27, 1908, terminated April 26, 1931, and, prior to the Act of 1933, Indian heirs of less than the full-blood, whether enrolled or unenrolled, took inherited land free from restrictions, and needed no statutory permission to lease their lands."

We search in vain for a case in which it has been held that the first proviso of Sec. 1 of the 1933 Act is to be applied retroactively so as to impose restrictions upon Indian heirs of less than the full-blood, upon land inherited by them, *where descent was cast prior to the effective date of said Act,* and where the land had become completely unrestricted before that time. On the other hand, the Supreme Court of Oklahoma in a well-considered opinion written by Justice GIBSON, held that *where the descent was cast prior to 1933,* the 1933 Act did not impose restrictions upon heirs of less than the full-blood. This decision has been generally accepted for about nine years by the bench and bar of

Oklahoma as correctly stating the law. The case referred to is *Moore* v. *Jefferson*, 190 Okl. 67, 120 P. (2d) 983, wherein the Court said:

> "This case does not fall within the rule announced in *Green* v. *Campbell*, 187 Okl. 54, 100 P. (2d) 997, wherein the court, on authority of *Glenn* v. *Lewis*, 10 Cir., 105 F. (2d) 398, held in effect that by reason of the provisions of Sec. 1, Act of Congress of Jan. 27, 1933, 47 Stat. 777, Indian heirs of the half blood were restricted Indians in so far as their inherited interests in tax exempt land was concerned. *Here the allottee died prior to the Act of 1933. Therefore said Act does not apply.*"

Of course we recognize that the Federal Courts are not bound by State decisions construing Acts of Congress, but the above decision being entirely consistent with the principles applied by the United States Courts, and coming from a highly respected source, is very persuasive. Also, its general acceptance for a number of years means that it has become a rule of property in the State of Oklahoma, which the Courts would be reluctant to overthrow.

—*United States* v. *Title Insurance & T. Co.*, 265 U. S. 472, at 486-487, 68 L. ed. 1110, at 1114;
Cate v. *Beasley*, 299 U. S. 30, 81 L. ed. 21;
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Dunn v. *Micco*, (10th Cir.) 106 F. (2d) 356.

Departmental Construction.

As is pointed out in the opinion of the Court of Appeals, the Department of the Interior has likewise refused to give the 1933 Act the retroactive effect contended for by petitioner.

54 Interior Decisions, 382, 1934. See also Sec. 45, Regulations promulgated and adopted by the Secretary of the Interior, April 27, 1938, 3 Fed. Reg., pp. 877, 884.

The Act of May 10, 1928, Did Not Impose Restrictions Upon This Land.

The contention that the Act of May 10, 1928, 45 Stat. 495, imposed restrictions upon this land is an absurdity. Sec. 1, cited by petitioner, deals exclusively with *allotted* land, and not with *inherited* land such as is involved in this case. Furthermore, petitioner fails to refer to Sec. 5 which expressly provides that the Act "shall not be construed to reimpose restrictions heretofore or hereafter removed by the Secretary of the Interior *or by operation of law.* * * *" (See Appendix.)

Issuance of a tax-exempt certificate as alleged by petitioner (page 2) does not make the land restricted. The claim in effect is that the land was restricted because a tax-exempt certificate was issued; and that such a certificate was issued because it was exempt! This is reasoning in a circle. It is a *non sequitur* to say that the land was restricted because, mistakenly or not, a tax-exempt certificate happened to be issued. Certainly this could not have had the effect of imposing a restriction under the Act of 1928, as claimed, for the provision is specific under Sec. 5 of the Act itself that nothing therein should be construed "to reimpose restrictions heretofore or hereafter removed * * * by operation of law."

Petitioner Was Under No Federal Restriction of Minority.

The suggestion, on page 9, that petitioner was under a Federal restriction by reason of minority at the time of the passage of the Act of 1933 is wholly without merit. The cases cited by him in support of this, deal with living minor *allottees*, and not with minor *heirs*. Minor heirs of less than full-blood came under Section 9 of the Act of 1908, and not

under Sections 2 and 6 as did "living allottees." Thus, no Federal restriction applied to a minor heir of less than the full-blood, except that applicable to the "special estate" in appropriate cases.

—*Harris* v. *Bell,* 254 U. S. 103, 65 L. ed. 159.

See also:

McNee v. *Whitehead,* (8th Cir.) 253 Fed. 546;
Board of County Commissioners v. *Brashears,* 91 Okl. 24, 215 Pac. 763;
Hardesty v. *Gordon,* 189 Okl. 677, 119 P. (2d) 70.

As we have seen, the special estate terminated on April 26, 1931, thus ending any restriction dependent upon it.

Act of February 11, 1936.

The Act of February 11, 1936, 49 Stat. 1135, c. 50, has no possible bearing upon this case. That act relates to the leasing of *restricted* lands of Indians of the one-half or more Indian blood. The question here is whether the inherited land in this case was *restricted.* The 1936 Act does not itself impose the restrictions contended for. Nor does it furnish any grounds for claiming that the 1933 Act was retroactive so as to impose restrictions upon lands inherited by Indians of less than the full-blood where descent was cast before 1933, and where the land had become completely unrestricted prior to the 1933 Act.

Conclusion.

Petitioner has wholly failed to show that the opinion of the Court of Appeals herein is in conflict with its other opinions. Further, his argument that the writ should be granted because hundreds of titles would be affected by the decision is entirely lacking in persuasiveness. The fact that

upholding petitioner's claims would tend to cloud many titles and thus work great hardship upon a large number of persons would certainly seem no sufficient reason for overturning a decision of the Court of Appeals clearly founded upon reason and justice, and entirely consistent with other decisions relating to the subject-matter. Particularly is this true when, as here, the opinion complained of by petitioner is in line with the decisions of the Supreme Court of the State, constituting a rule of property accepted by the citizens and the bar of Oklahoma over a period of years, and also is in agreement with Department construction.

We therefore respectfully submit that this Court should refuse to grant the petitioner, Floyd E. Quincy, the writ applied for.

Respectfully submitted,

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February, 1951.

APPENDIX.

Section 9 of Act of May 27, 1908, 35 Stat. 312, is in part as follows:

> "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: Provided, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: Provided further, That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March fourth, nineteen hundred and six, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one; * * *"

Sections 2 and 5 of Act of May 10, 1928, 45 Stat. 495, are as follows:

> "*Sec. 2.* That the provisions of Section 9 of the Act of May 27, 1908 (Thirty-fifth Statutes at Large, page 312), entitled 'An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and for other purposes,' as amended by Section 1 of the Act of April 12, 1926 (Forty-fourth Statutes at Large, page 239), entitled 'An Act to amend Section 9 of the Act of May 27, 1908 (Thirty-fifth Statutes at Large, page 312), and for putting in force, in reference to suits involving Indian titles, the statutes of limitations of the State of Oklahoma, and providing

for the United States to join in certain actions, and for making judgments binding on all parties, and for other purposes,' be, and are hereby, extended and continued in force for a period of twenty-five years from and including April 26, 1931, except, however, the provisions thereof which read as follows:

> 'Provided further, That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March 4, 1906, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior for the use and support of such issue, during their life or lives, until April 26, 1931; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from restrictions; if this be not done, or in the event the issue hereinabove provided for die before April 26, 1931, the lands shall then descend to the heirs according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions: Provided, That the word "issue," as used in this section, shall be construed to mean child or children: Provided further, That the provisions of Section 23 of the Act of April 26, 1906, as amended by this Act, are hereby made applicable to all wills executed under this section.'

which quoted provisions be, and the same are, repealed, effective April 26, 1931: Provided further, That the provisions of Section 23 of the Act of Congress approved April 26, 1906 (Thirty-fourth Statutes at Large, page 137), as amended by the provisions of Section 8 of the Act of Congress approved May 27, 1908 (Thirty-fifth Statutes at Large, page 312), be, and the same are hereby, continued in force and effect until April 26, 1956."

* * * * * * * *

"*Sec. 5.* That this Act shall not be construed to reimpose restrictions heretofore or hereafter removed by the Secretary of the Interior or by operation of law, nor to exempt from taxation any lands which are subject to taxation under existing law."